



ESMA - Remuneration Policies and Practices (MiFID)

*BEAMA's reply to the ESMA's consultation paper for firms providing investment services, entitled "Guidelines on remuneration policies and practices (MiFID)"
ref. ESMA/2012_570 of 17 September 2012.*

Intro

BEAMA¹ welcomes the opportunity to reply to the above mentioned ESMA consultation paper.

The member community of our industry branch organisation consist out of (UCITS and non-UCITS) fund managers, firms providing private and collective portfolio management for institutional as well as retail clients, and firms providing investment advice (MiFID).

General remarks

1. BEAMA reminds once again that **the asset management industry** will in the near future be regulated by **at least three main directives**: as UCITS managers our members will fall under UCITS IV/V, as other fund managers they will fall under AIFMD, and as (individual) portfolio managers they will fall under MiFID/CRD.

Our members will in practice often combine the implementation of these three directives in the **operational business context of one firm**. It is therefore of the utmost importance that **in general** the coherence of these EU-regulations is ensured in the practical setting of the day to day operational context of the asset management industry, and this goes also for the more **specific rules on remuneration** that each of the mentioned main directives will install.

¹ BEAMA, the Belgian Asset Managers Association, is the industry branch association of Belgian fund and asset managers. BEAMA has 97 members (55 effective members - 42 associated members, representing €217 billion in assets under management as at the end of 2011. BEAMA (see our website www.beama.be), is a founding member of Febelfin, the Belgian Federation of the Financial Sector, and of EFAMA, the European Fund and Asset Management Association.

2. Our second remark points to the **scope of payments referred to** by these guidelines.

2.1.

- On page 11, under numbers 29-30, some explanation is added on this subject. Besides the very general notion that “The aim of these guidelines ... to emphasise the regulatory framework of remuneration practices by **focussing on payments within a firm**”.
- Further we find on page 6, under number 8, that “The focus of these guidelines is the **remuneration of all persons involved in the provision of investment and/or ancillary services**”.

We thus understand that the payments envisaged within the firm are mainly payments towards the own employed staff. Could you confirm this interpretation?

2.2.

- Quid page 6-7, under number 10, where this notion seems to be enlarged “Furthermore, where entities or persons provide services to firms on the basis of an outsourcing arrangement or as tied agents, **the remuneration provided by firms to the outsourced entity or person or tied agent** is also regarded as remuneration for the purpose of these guidelines. In such cases, firms should also ensure that the tied agents and outsourced entities have remuneration policies and practices that are equally effective as the firms’ own arrangements ...”

We certainly do not agree that **payments made by firms to entities to which they have outsourced investment services** should be in scope of ESMA's remuneration rules under MiFID.

Firstly, because this type of payment is already captured by the MiFID inducement rules, which impose various obligations on firms and which provide enough safeguards with regard to clients’ interests.

Secondly, because the extension of the remuneration rules to payments made by firms to which they have outsourced investment services, does not correspond with the rationale or the remuneration rules of MiFID. The remuneration rules of MiFID aim to ensure that individual employees **act in the best interest of the client when providing investment service**. Payments made by firms to other entities are a compensation for the tasks performed by those entities, and such payments are thus not directed towards specific staff or categories of staff. Therefore they fall clearly outside the scope of the MiFID remuneration rules.

Firms that practice such outsourcing, and that satisfy themselves that the entities to which they outsource investment services have an effective remuneration policy, should therefore be deemed sufficient in view of MiFID remuneration rules.

3. We also stress again, in view of the wave of regulation that is being prepared for actors in the financial sector, that not all our members are large transnational firms.

We thus urge the authorities to consider the **inclusion of the proportionality principle** when introducing organisational and/or reporting requirements and to **carefully consider the impact on the nature, scale and complexity of the firms concerned**. (cf. page 12, under number 34).

Answers to the list of consultation questions (cf. Annexe II)

Q1	<i>Do you agree that firm's remuneration policies and practices should be aligned with effective conflicts of interest management duties and conduct of business risk management obligations so as not to create incentives that may lead relevant persons to favour their own interest, or the firm's interests, to the potential detriment of clients? Please also state the reasons for your answer.</i> <u>Answer</u> The firm's remuneration policies and practices do not have to be initially aligned with effective conflict of interest management duties and conduct of business risk management obligations. We do believe that there should be from time to time an evaluation and possible correction of the firm's remuneration policies and practices. Align would mean that the conflict of interest management duties and conduct of business risk management obligations would be the connecting thread and the reference of those policies and practices. It would be better that the conflict of interest rules apply only when a conflict of interest occurs in the implementation of a remuneration policy.
Q2	<i>Do you agree that, when designing remuneration policies and practices, firms should take into account factors such as the role performed by relevant persons, the type of products offered, and the methods of distribution? Please also state the reasons for your answer.</i> <u>Answer</u> When designing remuneration policies and practices, firms should take into account the role performed by relevant persons, the type of products offered etc., but in a proportionate manner. Because it is effectively not realistic to foresee all the assumptions, owing to the immense variety of cases likely to be met. By wanting to regulate and organise everything in detail, the rules will become impracticable and they will never be exhaustive because you will still have a case not covered by the regulation. It would be better to have general provisions and principles, and a possibility for the European regulator to interpret the rules in case local discordant interpretations subsists.

Q3	<i>Do you agree that when designing remuneration policies and practices firms should ensure that the fixed and variable components of the total remuneration are appropriately balanced?</i> <u>Answer</u> It is questionable if an appropriated balance between fixed and variable components in total remuneration can be established in such a general way. Investment policies and products characteristics are very heterogeneous and a “one size fits all” rule is often an idle goal. There are no common rules in these matters and a case by case approach would be more appropriate.
Q4	<i>Do you agree that the ratio between the fixed and variable components of remuneration should therefore be appropriate in order to take into account the interests of the clients of the firm? Please also state the reasons for your answer.</i> <u>Answer</u> Depending on the type of investment product (see also the answer to Q3), a ratio must be reasoned in order to protect the clients’ interest in an appropriated way.
Q5	<i>Do you agree that the performance of relevant persons should take account of non-financial (such as compliance with regulation and internal rules, market conduct standards, fair treatment of clients etc.), as well as financial, criteria? Please also state the reasons for your answer.</i> <u>Answer</u> In order to avoid a too expensive, too complicated and too subjective process of the performance assessment of relevant persons, objective and quantifiable targets ought to be the main basis of the determination of the remuneration of a fund or portfolio manager, even if other non-financial criteria could be taken into account therefore.
Q6	<i>Do you agree that the design of remuneration policies and practices should be approved by senior management or, where appropriate, the supervisory function after taking advice from the compliance function? Please also state the reasons for your answer.</i> <u>Answer</u> Yes, the design of the remuneration policies and practices should be approved by the supervisory function. It is the responsibility of the remuneration committee which is usually a committee of the supervisory body (Board of Directors or Supervisory Board).

Q7	<i>Do you agree that senior management should be responsible for the implementation of remuneration policies and practices, and for preventing and dealing with any the risks that remuneration poli-cies and practices can create? Please also state the reasons for your answer.</i> <u>Answer</u> Yes, it is the role of the senior management to implement and assure the assessment of the implementation of policies defined by the supervisory body (see also the answer to Q6).
Q8	<i>Do you agree that the organisational measures adopted for the launch of new products or services should take into account the remuneration policies and practices and the risks that the new products or services may pose? Please also state the reasons for your answer.</i> <u>Answer</u> Organisational measures adopted for the launch of new products or services should take into account the remuneration policies and practices <u>only in case</u> the remuneration is effectively linked to the launch and setting up of a new product e.g. In other situations, such as when the remuneration is linked to the distribution stage of the product, it is not relevant.
Q9	<i>Do you agree that the process for assessing whether the remuneration features related to the distribution of new products or services comply with the firm's remuneration policies and practices should be appropriately documented by firms? Please also state the reasons for your answer.</i> <u>Answer</u> The process for assessing should be documented certainly if the investment product is essentially distributed by its promoter and its manager. In other settings, there may be less need for this burdensome documentation requirement. Again, a “one size fits all” rule is not effective.
Q10	<i>Do you agree that firms should make use of management information to identify where potential conduct of business and conflict of interest risks might be occurring as a result of specific features in the remuneration policies and practices, and take corrective action as appropriate? Please also state the reasons for your answer.</i> <u>Answer</u> We can agree with the principle that is raised in the question. But we want to stress that it should be applied in a proportionate way in order to avoid an overload of rules likely to jeopardize the future of the asset management industry. We repeat here the key concern for sufficient proportionality as it was expressed by the European Fund and Asset Management Association. EFAMA stresses that such requirements need to provide sufficient flexibility to allow for tailoring when applied to individual sectors and individual firms. Management companies should be able to apply the principles in different ways according to their size and the size of the funds they manage, their internal organization and the nature, scope and complexity of their activities.

Q11	<i>Do you agree that firms should set up controls on the implementation of their remuneration policies and practices to ensure compliance with the MiFID conflicts of interest and conduct of business requirements, and that these controls should include assessing the quality of the service provided to the client? Please also state the reasons for your answer.</i> <u>Answer</u> We do not agree that firms should set up global controls on the implementation of their remuneration policies and practices because they do not have the means to do so. This control could only be applicable to product factories if they as well have remuneration practices linking remuneration to the sale of specific products. When this is not the case, the control should be on the distributors instead. One should also bear in mind that each individual client in the network of distributors / intermediaries of a particular asset manager is not necessarily known to the asset manager itself in a direct way.
Q12	<i>Do you agree that the compliance function should be involved in the design process of remuneration policies and practices before they are applied to relevant staff? Please also state the reasons for your answer.</i> <u>Answer</u> Yes, the role of the compliance function should be involved in the setting up of general compliance rules and principles toward the relevant staff.
Q13	<i>Do you agree that it is difficult for a firm, in the situations illustrated above in Annex I, to demonstrate compliance with the relevant MiFID rules?</i> <u>Answer</u> Annex I contains several situations and examples. It is therefore not easy to answer in a general way that goes for every individual situation or example stated. In a general way we can only state that with these so called “high risk” examples (strong incentive so sell a specific product) it will be difficult to demonstrate compliance with the relevant MiFID rules by the firm.
Q14	<i>If you think some of these features may be compatible with MiFID rules, please describe for each of (a), (b), (c) and (d) in Annex I above which specific requirements (i.e. stronger controls, etc) they should be subject to.</i> <u>Answer</u> We did not look into the listing of more specific requirements. See also our answer on Q13, it will be difficult to demonstrate compliance with the relevant MiFID rules by the firm.

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